

for class members to adult service systems and/or independent living when class members "age out" of the system. The individualized service plans of class members who are expected to "age out" of the system shall provide for such transitions.

58. The "system of care" shall accord class members the following rights: the right of access to counsel and the courts, the right of access to family members, the right to be free of excessive medication, and the right to be free from unnecessary seclusion and restraint. DHR shall promulgate policies, acceptable to both parties, describing and protecting these rights. The policies shall provide that:

a. Class members shall be permitted to freely communicate by telephone or mail with (i) legal counsel of the class member's choosing, including the class member's guardian ad litem, and (ii) organizations that provide legal services.

b. Class members shall be permitted to freely communicate by telephone or mail with (i) the class member's parents and family members and (ii) adult friends of the class member including former foster parents. This right may be restricted only pursuant to procedures and in circumstances specifically identified in written policy.

c. Class members retain the right to communicate and visit with their parents and family even when the class member is in the permanent custody of DHR (i.e., parental rights have been terminated). When the class member is in permanent custody, the matter of his/her communication with parents and family members

shall be addressed in the class member's individualized service plan. Such communication may be restricted when it would undermine or defeat attainment of the goal or objectives identified in the plan.

59. Class members, parents and foster parents shall be made aware, in an effective manner, of the availability of advocacy services to assist them in protecting and advancing their rights and entitlements.

60. Class members shall be provided effective assistance and support in applying for SSI benefits. (Where it is necessary that the class member's parents apply for benefits, such assistance and support shall be provided to the parents.)

61. Class members shall be enrolled, if eligible, in the EPSDT program and shall receive comprehensive screens that meet the requirements of federal law⁵⁵ and are provided according to a professionally acceptable schedule.

62. The "system of care" shall promote early identification and timely intervention in order to enhance the likelihood of positive outcomes.

63. The "system of care" will identify, assess, and disseminate state-of-the-art methods, strategies, and materials for serving class members and their families.

IX. Implementation.

64. The parties shall enter into an Agreement Regarding Implementation, the terms of which shall be incorporated herein

⁵⁵ 42 U.S.C. §1396d(r)(1); 34 C.F.R. §§441.56(b) & 441.58.

by reference and shall be enforceable by the Court.

65. The Agreement Regarding Implementation shall require the development of an Implementation Plan (i.e., a plan of operations, with specific goals and timetables, for implementing the requirements of this decree), which shall be presented to the Court, by October 1, 1992, for the Court's approval.⁵⁶

66. The Implementation Plan shall assure compliance with this decree by October 1, 1999.

67. The Implementation Plan shall meet any and all specific requirements contained in the Agreement Regarding Implementation.

68. The Implementation Plan will specifically describe the duties of the monitor during the period that the Plan is being implemented and the means by which the monitor will fulfill those duties.

69. Defendant shall ensure that:

a. By October 1, 1991, DHR promulgates and implements the policies required by paragraphs 58 and 72.

b. By October 1, 1992, DHR promulgates and implements the policies required by paragraphs 30, 44, and 45(d).

c. The definitions required by paragraphs 7(a) and 7(c) and the policies required by paragraphs 48(b), 49, and 51 are promulgated and implemented in accordance with the Implementation Plan.

⁵⁶ In the parties' view, the anticipated increase of \$3.5 million in the budget of the Division of Family and Children's Services for FY 1992 should be sufficient to finance the creation of the Implementation Plan.

70. If necessary to address staffing needs identified in the Implementation Plan and/or to acquire staff needed to assure compliance, defendant may modify state government administrative requirements, especially those imposed by the personnel system. When he determines that it is necessary to exercise his authority under this paragraph, defendant shall give prior notice to the State Personnel Director as soon as practicable, so as to give the State Personnel Director the opportunity to obviate the necessity for defendant's action.

71. During each budget cycle, defendant shall prepare and submit to the Legislature a needs-based budget designed to assure compliance with this decree and the Implementation Plan. In addition, defendant shall prepare and submit to the Legislature for its approval such legislation as is needed to assure compliance with this decree and the Implementation Plan.

X. Plaintiffs' Counsels' Right of Access.

72. Plaintiffs' counsel and their agents shall have reasonable access to: class members; placements in which class members reside⁵⁷; the staff of such placements; case records concerning class members and their families; and DHR state-office and county-office staff.⁵⁸ DHR shall promulgate a policy,

⁵⁷ Such placements include foster homes, therapeutic foster homes, small group homes, group homes, child care institutions, institutions, and placements licensed or certified by DMH/MR and/or DYS.

⁵⁸ Plaintiffs' counsel has represented that it is not their intention to exercise their access in a way that is unreasonable or overly intrusive or to make unreasonable requests for information. If defendant believes that plaintiffs' counsel are exercising their

acceptable to both parties, providing for such access. The policy shall provide plaintiffs' counsel at least the same access that plaintiffs' counsel enjoyed pursuant to the Court's orders of April 26, 1990, regarding access to class members and to DHR employees and staff and of October 19, 1990, concerning access to DHR county offices.

73. Plaintiffs' counsel shall have access to information and documents obtained, compiled, or generated by:

a. Consultants utilized to assist in the development of the Implementation Plan;

b. The quality assurance program required by the Implementation Plan; or

c. The monitor.

74. The Protective Order Regarding Confidentiality, entered June 13, 1989, shall remain in effect, and plaintiffs' counsel and their agents and employees shall continue to abide by the terms of the order.

XI. Monitor.

75. By August 1, 1992, the defendant shall appoint a monitor in a manner mutually agreed to by the parties.⁵⁹

76. The monitor shall be independent of the parties. The

access rights in an unreasonable or overly intrusive fashion, defendant may raise the issue with the Court.

⁵⁹ If the monitor is replaced, his/her replacement shall also be selected in a manner mutually agreed to by the parties. The monitor shall be replaced if he resigns; is unable to perform his/her duties due to illness, disability, or death; or is dismissed pursuant to paragraph 81 below.

monitor shall:

- a. Monitor compliance with this decree and the Implementation Plan;
- b. Issue semiannual reports concerning defendant's progress in implementing this decree and the Implementation Plan;
- c. Otherwise keep the parties apprised of defendant's progress and the status of compliance;
- d. Upon request of either party, meet with the parties to discuss progress and further measures needed to achieve compliance;
- e. Make recommendations concerning means to facilitate compliance;⁶⁰ and
- f. Timely respond to written inquiries from the parties.

77. The monitor shall have access to all information and documents the monitor requires to perform his/her job. This access shall include access to: class members; placements in which class members reside⁶¹; the staff of such placements; case records concerning class members and their families; and DHR state-office and county-office staff.

78. The monitor shall abide by the terms of the Protective Order Regarding Confidentiality, entered June 13, 1989. (The

⁶⁰ The monitor shall not have the power to enforce his recommendations.

⁶¹ Such placements include foster homes, therapeutic foster homes, small group homes, group homes, child care institutions, institutions, and placements licensed or certified by DMH/MR and/or DYS.

order shall apply to him/her as if he/she were a party or counsel to a party.)

79. The parties shall negotiate an agreement concerning whether and in what circumstances they may engage in ex parte communications with the monitor. If they are unable to reach an agreement, they shall refer the matter to the Court. No party shall engage in ex parte communications until the parties have negotiated an agreement concerning such communications or the matter has been resolved by the Court.

80. The monitor's compensation shall be sufficient to attract a person with the requisite background and skills. DHR shall pay the monitor's expenses and fees per a written contract.

81. The monitor may be dismissed and replaced (a) by agreement of the parties or (b) by the Court upon petition of either party when exceptional circumstances are shown.

82. The provisions of paragraphs 75-81 shall remain in effect until compliance is achieved with this decree and the Implementation Plan.

XII. Primacy of this Decree.

83. Defendant must comply with his obligations under this decree and the Implementation Plan, despite orders to the contrary issued by any state official or by any state court (including in the course of Juvenile Court proceedings).⁶²

⁶² Paragraphs 83-85 should not be interpreted as requiring the defendant to place himself in contempt of a state court order before seeking protection or relief from this Court. Instead, they should be interpreted as requiring defendant to seek relief from this Court from any state court order that would require action

84. Despite orders to the contrary issued by any state official or by any state court (including in the course of Juvenile Court proceedings), defendant may refuse to place class members in particular placements and may refuse to provide class members and their families particular services if doing so would require defendant to violate his obligations under this decree or the Implementation Plan.

85. Despite orders to the contrary issued by any state official or by any state court (including in the course of Juvenile Court proceedings), defendant may refuse to provide DHR-funded services to a class member or a member of the class member's family before a determination has been made, acceptable to DHR, whether the services are appropriate for the class or family member.

86. Only this Court, the monitor, or another person or entity appointed by the Court shall have the authority to determine compliance with this decree.

87. Nothing in this decree is intended to create an independent cause of action, right, or liberty or property interest under state law.

XIII. Plaintiffs' Costs and Attorneys' Fees.

88. Plaintiffs are "prevailing parties" in this litigation and shall recover⁶³ (a) the expenses of their counsel⁶⁴ and (b)

contrary to this decree.

⁶³ In agreeing to this paragraph, the defendant has relied upon plaintiffs' representation that the reasonable expenses and attorneys' fees to date are in the range of \$500,000-\$600,000.

a reasonable⁶⁵ attorneys' fee.⁶⁶

89. The parties shall negotiate in good faith the amount of plaintiffs' recovery of expenses and attorneys fees. If a settlement is not reached by August 1, 1991, plaintiffs may file a petition with the Court for an award of expenses and attorneys fees. Plaintiffs shall not file any such petition during the parties' negotiations up to and including August 1, 1991.

90. Plaintiffs' counsel are entitled to be reimbursed by the defendant for expenses⁶⁷ and time reasonably expended by plaintiffs' counsel in the course of:⁶⁸

a. Monitoring or securing the implementation of this decree or the Implementation Plan;

b. Efforts to promote the development of, and/or negotiations concerning, the Implementation Plan; or

⁶⁴ This includes (a) plaintiffs' counsel's travel expenses (including the expense of lodging, meals, and transportation while away from home) and (b) the fees and expenses of expert witnesses.

⁶⁵ The hourly fee for work performed by attorney Burnim shall be no less than \$110 and no more than \$150; the hourly fee for attorneys Schoen, Jackson, and Johnson shall be no less than \$90 and no more than \$125.

⁶⁶ Plaintiffs' counsel's hours shall not be reduced based on any contention that counsel's work related to any specific claim should not be compensated.

⁶⁷ This includes (a) plaintiffs' counsel's travel expenses (including the expense of lodging, meals, and transportation while away from home) and (b) the fees and expenses of expert witnesses.

⁶⁸ The hourly rate and expenses of both plaintiffs' counsel and their agents, including experts, shall be a reasonable one. The defendant may challenge as unreasonable any reimbursement sought by plaintiffs' counsel. Disputes that cannot be resolved by mutual consent will be resolved by the Court.

c. Opposing efforts by defendant or others to modify or vacate this decree or the Implementation Plan.

XIV. Deadlock of the Parties.

91. This decree anticipates ongoing efforts by the parties to resolve matters by mutual consent. If the parties are unable to resolve a matter by mutual consent, the matter shall be referred to the Court for resolution. The Court will resolve the matter in a manner consistent with the purposes and goals of this decree.

92. The failure of the parties to reach mutual agreement on any matter or matters shall not invalidate or nullify this decree or any requirement of this decree.

XV. Termination of this Decree.

93. On or after October 1, 1999, the defendant may move for termination of this decree⁶⁹ upon a showing that he is in substantial compliance with the requirements of the decree and of the Implementation Plan and that there is a reasonable prospect that he will remain in substantial compliance.

Done, this _____ day of _____, 1991.

U.S. District Judge

⁶⁹ Termination of this decree would terminate the requirements of the Implementation Plan as well.

APPENDIX A

EXH - A
PROVIDER LIST

05

PLAINTIFF'S
EXHIBIT
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297	Boyd School
287	Breuer Porch
14614	Breuer Porch STTEP Program
315	The Bridge
196	Bryce
382	Camp Sunshine
211	Caper House
661	Chalkville
376	Cornerstone
180	Eunola Adolescent Center
380	Fairway
204	Family & Child Service (Gateway)
5875	Glenwood Wilderness Camp
312	Hickory House
11485	Hillcrest Sunrise Treatment Center
288	Lee County Youth Dev. Center
313	McDonough House
250	Mt. Meigs Campus
655	Pathway, Inc.
14930	Pines
13698	Presbyterian Home Treatment
12867	Southeastern Adolescent Program
8366	Three Springs
5796	Tri-Wil/Porta Cras
320	Turning Point
660	VACCA
277	Alabama Baptist Childrens Home (Northport)
347	Baldwin County Youth Services Home
351	Bell Road Group Home
298	Brantwood
354	Colbert County Attention Home
352	Cossa Valley Regional Attention Home
357	Cadsden Group Home
359	Group Homes (GUMS)
290	Harris Home
13071	Holy Innocents
11086	King's Ranch - Adderhold
358	King's Ranch - Oneonta
355	Lauderdale Attention Home
263	Lee County Shelter
9425	Lee County D & E
377	Mobile County Halfway House
365	Mobile Group Home for Boys
348	Riverside, Inc.
27A	St. Mary's Home
3576	Salvation Army Youth Services
368	Shelby County Youth Services
379	Sojourn
371	Troy State University Group Home
372	United Methodist - Genesis
249	United Methodist - Settlement
373	Walker County Youth Development Center (Beacon House)